

STATE OF MICHIGAN
COURT OF APPEALS

JESSE BURGETT,

Plaintiff-Appellant,

v

MELVIN LEWIS,

Defendant-Appellee.

UNPUBLISHED

April 15, 2003

No. 235729

Lenawee Circuit Court

LC No. 00-000108-NO

Before: Bandstra, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting defendant's motion for summary disposition under MCR 2.116(C)(10). We reverse and remand for further proceedings.

This case arises from plaintiff's fall on the front steps of a house he was leasing from defendant. Plaintiff, while admitting on appeal that he was negligent in the manner in which he used the steps at the time of his fall, alleged below and alleges on appeal that defendant was also negligent by failing to ensure that the steps were in good repair and that an eaves trough was installed above the steps. Plaintiff contends that he agreed to perform repairs on the property himself and asked defendant at some point before the fall to provide materials to repair the steps and to install the eaves trough but that defendant failed to provide him with the materials. Defendant contends that the fall occurred solely because of plaintiff's careless manner of using the steps and plaintiff's failure to remove snow and ice from the steps.

We review de novo a trial court's decision to grant summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). "When reviewing a motion granted under MCR 2.116(C)(10), we must examine all relevant documentary evidence in the light most favorable to the nonmoving party and determine whether there exists a genuine issue of material fact on which reasonable minds could differ." *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 407; 622 NW2d 533 (2000).

Although courts should be liberal in finding a genuine issue of material fact, "summary disposition is appropriate when the party opposing the motion fails to provide evidence to establish a material factual dispute." *Porter v City of Royal Oak*, 214 Mich App 478, 484; 542 NW2d 905 (1995). A court may not make findings of fact or weigh credibility in deciding a summary disposition motion. *Nesbitt v American Community Mutual Ins Co*, 236 Mich App 215, 225; 600 NW2d 427 (1999). Accordingly, when the truth of a material factual assertion

depends on credibility, a genuine factual issue exists and summary disposition may not be granted. See *Metropolitan Life Ins Co v Reist*, 167 Mich App 112, 121; 421 NW2d 592 (1988).

“To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000) (footnote omitted).

Here, defendant had a duty to keep the premises in reasonable repair. See MCL 554.139. Moreover, plaintiff sufficiently raised a factual issue regarding whether defendant breached that duty. Indeed, plaintiff testified that defendant failed to provide him with the materials necessary to repair the steps and to install an eaves trough that would have diverted damaging water from the steps.¹ Plaintiff testified that a board on the step was “bubbled up, it was split from the moisture and all the coldness and it cracked it” and that he broke his leg when he fell on the steps. Under these circumstances, plaintiff sufficiently raised an issue of fact regarding whether defendant breached his duty to keep the steps in good repair and whether this breach caused plaintiff damages.

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Patrick M. Meter

¹ The complaint alleged, in part, that “[p]laintiff . . . slipped and fell because of the wooden step that was warped due to the faulty gutter system above the step.”